U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29828355

Date: APR. 29, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner is a synchronized swimming athlete, coach, and performer who seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

After issuing a notice of intent to deny, the Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition). The Director concluded the record did not establish that the Petitioner had a major, internationally recognized award, nor did it demonstrate that she sustained the requisite level of acclaim prior to filing the petition. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

Because the Director did not offer any analysis on the four regulatory criteria they decided the Petitioner met, we will also move directly to the subsequent procedural portions of the case.

II. FINAL MERITS DETERMINATION

A final merits determination includes an evaluation of several overarching aspects of the case. That includes evaluating whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation.

In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119–20). *See also* 6 *USCIS Policy Manual* B.2, https://www.uscis.gov/policymanual (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification). In this matter, we determine that the Petitioner has not shown her eligibility.

As the Director decided the Petitioner has submitted the requisite initial evidence we will evaluate the primary basis of the Director's denial; whether the Petitioner has demonstrated that she maintained her sustained national or international acclaim by a preponderance of the evidence.

The Petitioner characterizes herself as a professional synchronized swimming athlete who has also been a member of the Venezuelan national team representing her country at multiple national and international competitions. She participated in several qualifiers for the Olympic Games and national championships, and on multiple occasions was recognized as the regional-level athlete of the year. Despite her young age, her involvement in synchronized swimming spans more than two decades. The Petitioner left her home country and last entered the United States in 2016.

Within the final merits determination, the Director primarily focused on the Petitioner's shortcoming of not showing she sustained her acclaim as an athlete in the years preceding the petition filing. In particular, the Director discussed the four areas in which she satisfied the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x), and how that acclaim abruptly ended around 2015 and 2016 and was nonexistent for seven or eight years through the time she filed the petition in 2023. And we agree that after moving to the United States, the Petitioner was not successful in maintaining a similar level of acclaim on a national or international level that she had achieved in decade plus before moving to this country.

On appeal, the Petitioner responds to that portion of the Director's decision by stating that her career is not one that has any gaps or low points, and that she has sustained national and international recognition for decades. The Petitioner continues indicating she was an active member of institutions in Venezuela until her family left her home country to come to the United States in 2016 and immediately after she arrived in this country, she "had a transition phase, short, brief while her and her family were adapting to the new country." She maintains that she "never lost contact with her career, colleagues and organizations that supported her." Further, she claims during the time frame from 2017 through 2020, she received offers from various colleagues in different countries "to start collaborating with them in the coaching of [synchronized] swimming national teams."

As an initial point, the Petitioner does not explain within the appeal brief how these job offers on national teams somehow equates to the types of acclaim that this restrictive immigrant classification requires. Next, the Petitioner reflects on the difficulties of finding activities in her field during 2020 and 2021 during the COVID-19 pandemic, but she does not address the post-pandemic time between mid- to late-2020 when her state of Florida reopened almost all aspects of society. Even if her endeavor required her to travel outside of her home state, it remains that she has not explained why the record is bereft of the types of achievements and acclaim she experienced over the nearly two decades prior to the petition filing.

Finally, the Petitioner has joined a professional synchronized swimming and water dance company as a performer. But that appears to have occurred after she filed the petition. Despite the fact that any post-petition filing achievements cannot be fully considered in this petition, even with this achievement, she has not offered any material illustrating accolades or acclaim associated with this employment.

The Petitioner states that there is no definitive timeframe specified in the regulation of what constitutes sustained declaim. But for an individual who has been in synchronized swimming since she was five years old and spanning more than the two following decades, a seven to eight-year hiatus appears to be a situation of one who has not successfully sustained national or international acclaim at a commensurate level.

Although the Director discussed other shortcomings within the denial such as the Petitioner's transition from athlete to coach, our sustained acclaim determination is dispositive of this appeal, we will not address and we reserve the Petitioner's remaining appellate arguments. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of Chen*, 28 I&N Dec. 676, 677 n.1, 678 (BIA 2023) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

In summary, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward that goal. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Considering the lack of a showing that the Petitioner has sustained the level of national or international acclaim that she once enjoyed, she has not submitted extensive documentation exhibiting she has attained a level of expertise placing her among that small percentage that has risen to the very top of the field of endeavor. The record does not demonstrate that her personal and professional achievements rise to a level of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden here.

ORDER: The appeal is dismissed.